Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
A National Broadband Plan For Our Future	)	GN Docket No. 09-51

Comments of ADTRAN, Inc.

ADTRAN, Inc. ("ADTRAN") files these comments in response to the Commission's Further Notice of Proposed Rulemaking with regard to reform of the Universal Service Fund contribution methodology.[1] ADTRAN appreciates the work the Commission has undertaken to modernize the various subsidy and intercarrier compensation systems to facilitate the upgrade of the networks to IP-based technologies and explicitly to subsidize broadband deployment. With this *Further NPRM* the Commission now addresses another critical aspect of that effort – reform of the contribution side of the equation. As explained below, ADTRAN urges the Commission to ensure that the new contribution methodology does not dampen continued adoption and deployment of broadband or other valuable services.

INTRODUCTION AND SUMMARY

ADTRAN, founded in 1986 and headquartered in Huntsville, Alabama, is a leading global manufacturer of networking and communications equipment, with an innovative portfolio of more than 1,700 solutions for use in the last mile of today's telecommunications networks.

[1] *Universal Service Contribution Methodology; A National Broadband Plan For Our Future*, WC Docket No. 06-122, GN Docket No. 09-51, Further Notice of Proposed Rulemaking, FCC 12-46, released April 30, 2012, 77 *Federal Register* 33896 (June 7, 2012) (hereafter cited as "*Further NPRM*").

ADTRAN's equipment is deployed by some of the world's largest service providers, as well as distributed enterprises and small and medium businesses. ADTRAN supplies innovative network access products that enable a wealth of applications ranging from Internet access and corporate connectivity to telecommuting and distance learning. Importantly for purposes of this proceeding, ADTRAN solutions enable voice, data, video and Internet communications across copper, fiber and wireless network infrastructures. ADTRAN thus brings an expansive perspective to this proceeding, as well as an understanding of the impact of regulatory policies on service providers' investment decisions.

There is a consensus that the current USF contribution model is unsustainable. The "tax" is applied to a limited and shrinking set of service revenues, and engenders significant confusion as to what services/revenues are covered. ADTRAN urges the Commission to use a number of important principles to guide reform of the system. Any new contribution methodology must (1) be technology and competitively neutral; (2) not create disincentives for the deployment of new services and technologies; (3) be manageable; and (4) follow the dictates of Congressional authority. As detailed herein, some of the proposals in the *Further NPRM* may not abide by these principles, and so should be rejected.

GUIDING PRINCIPLES

ADTRAN recognizes that the contribution methodology reform, like much of the USF and intercarrier carrier compensation reform, involves a tricky balance of competing interests, economic issues and political considerations. As an example of the power of these "forces," what was once a temporary exemption from access charges[2] to protect a nascent "enhanced

[2] *MTS and WATS Market Structure*, 97 F.C.C.2d 682 (1983) at ¶ 83:

> Other users who employ exchange service for jurisdictionally interstate communications, including private firms, enhanced service providers, and sharers, who have been paying

services" industry[3] grew into a statutory "information services" category that some argue must forever be exempt from contributions to universal service support – even as universal service support is now explicitly designed to foster broadband deployment. This experience counsels the Commission to reform the USF contribution methodology based on widely agreed principles rather than *ad hoc* determinations.

As an initial matter, ADTRAN believes that the new contribution methodology must be technology and competitively neutral. A carrier's decision as to what technology to deploy, or a customer's decision as to which service they will subscribe, should not be driven by an arbitrarily-assigned USF contribution cost. The Commission recognizes the importance of this

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> the generally much lower business service rates, would experience severe rate impacts were we immediately to assess carrier access charges upon them. One of our paramount concerns in fashioning a transition plan is the customer impact or market displacement that any proposed remedy might cause. Were we at the outset to impose full carrier usage charges on enhanced service providers and possibly sharers and a select few others who are currently paying local business exchange service rates for their interstate access, these entities would experience huge increases in their costs of operation which could affect their viability. The case for a transition to avoid this rate shock is made more compelling by our recognition that it will take time to develop a comprehensive plan for detecting all such usage and imposing charges in an evenhanded manner. We would envision that once a procedure is implemented by which the exchange carriers charge all access service users for their usage on an equal basis, the level of carrier access charges in general should fall as the universe of liable entities is expanded.

[3] *Ibid*., Concurring statement of Commissioner Dawson:

> While the *Reconsideration Order* attempts to spread the NTS subsidy more evenly among interstate users (or potential users) of local exchange plant, it is sound public policy to affect enhanced service providers as little as possible. In many respects, enhanced services are an "infant industry" segment of the telecommunications industry that only recently has been freed from the confines of regulation and an uncertain regulatory future by the Commission's *Computer II* decision. The development of enhanced services will increase the productivity of industry and the quality of life for consumers. It is a segment of industry where economic growth and rising employment are inevitable. To stifle such development, even for a brief transition period, seems needlessly wasteful and ultimately self-destructive as enhanced service providers exit the industry, thereby paying neither carrier's-carrier charges nor wages to employees.

principle,[4] and it was a driving force in Congress' directives to develop a transparent, equitable and nondiscriminatory universal service program as competition was introduced into the local services markets.[5] Economic distortions introduced by the regulators would undercut the principal purpose of the Telecommunications Act of 1996, which was to substitute marketplace forces for regulatory fiat.

In a similar vein, the Commission must be sure when designing the new contribution methodology that it does not create disincentives for the deployment of new services and technologies. One of the primary pillars of the Universal Service Fund reform was the development of the Connect America Fund, which is intended to foster broadband deployment to presently unserved locations. A contribution methodology that discourages broadband adoption would also reduce carriers' incentives to deploy broadband – the corollary to "if you build it they will come" is that you will *not* build it if you know they are not going to come. Thus the Commission should adopt a contribution methodology that does not undercut its goal of universal broadband availability.

An important lesson the Commission appears to have learned from the complexity of the "evolved" current methodology is that too convoluted of a system imposes significant costs on the Commission, the collection agency (USAC) and the contributors, just in terms of interpreting and enforcing the collections mechanism.[6] Under the current revenue-based system applicable to

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[4] *Further Notice* at ¶ 24 (citations omitted):

> By treating similar or substitutable services differently, our contributions rules may create unintended market distortions. Stakeholders have urged that any reforms to the contribution system should be designed to provide that similar services are treated in a similar manner, regardless of technology or type of provider.

[5] 47 U.S.C. § 254(d).

[6] *Further Notice* at ¶ 23.

certain categories of services, contributors must undertake a "good faith" effort to make inherently arbitrary revenue allocations, and to "guess" how the Commission and/or USAC would categorize a new service. Concomitantly, USAC and the Commission need to conduct complex audits and determine whether, or how much of, a service provider's revenue is subject to the USF contribution factor. The uncertainty and delays resulting from the current complexity can adversely affect a service provider's ability to compete for business.[7]

Finally, ADTRAN observes that the Commission does not have *carte blanche* to design a new USF contribution methodology – the Commission must act within the constraints imposed by Congress. Section 254(d) of the Telecommunications Act of 1996, however, does provide the Commission with a significant degree of flexibility in setting up the collections system. The contributions must be "equitable and nondiscriminatory," and the mechanisms must be "specific, predictable, and sufficient." In addition, application of the contribution requirement is mandatory as to certain services and providers – "every telecommunications carrier that provides interstate telecommunications services" – while the Commission has the authority to extend the requirement to "any other provider of interstate telecommunications" if the Commission determines "the public interest so requires." The Commission has found that the phrase "provider of interstate telecommunications" encompasses much more than offering "interstate telecommunications services," and that broad interpretation has been upheld by the Court of Appeals.[8]

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[7] By way of example, Stratos filed a petition for declaratory ruling with regard to the exemption for services provided to government entities that has been pending for almost three years. Stratos Petition for Clarification or Declaratory Ruling, WC Docket No. 06-122 (September 15, 2009).

[8] *Vonage Holdings Corp. v. FCC*, 489 F.3d 1232, 1240–41 (D.C. Cir. 2007).

Some of the Proposals in the Further NPRM do not Follow These Principles

The *Further NPRM* suggests a wide range of proposed contribution methodologies, not all of which comport with the principles discussed above. ADTRAN is potentially concerned with the proposal to extend the contribution obligations to broadband Internet connections, at least insofar as any contribution obligation would be disproportionately high.[9] For example, a significant "per connection" fee assessed on broadband connections would adversely affect demand, thus negating the Commission's goals of expanding broadband deployment and adoption. ADTRAN is concerned that a tiered, connection-based system (without any reliance on revenue-based contributions from other services)[10] is likely to produce contribution requirements that will stifle broadband adoption, particularly for higher-speed services. Likewise, if the Commission applies a revenue-based mechanism to Internet access services, and the rate level approaches the historic high of 17.9 % (the rate for the First Quarter of this year), then such a "tax" is likely to have a dampening effect on demand for broadband connections.[11]

Such drastic changes to the contribution mechanisms would thus not appear to comply with the Congressional requirement that any non-mandatory contribution mechanisms must be consistent with the public interest, or the goal of fostering broadband deployment and adoption. On the other hand, to the extent that the State Joint Board Members' prediction of the impact of a broad expansion of the revenue-based contribution mechanism proves to be accurate,[12] then the

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9 *E.g., Further NPRM* at ¶ 113 (suggesting possible contribution methodology that assesses the full retail revenues of bundled services that contain "telecommunications").

10 *E.g., Further NPRM* at ¶ 220.

11 *Further NPRM* at ¶ 84.

12 *Further NPRM* at ¶ 69:

resulting approximately 2% "tax" would have a much less distortive impact on broadband demand.

ADTRAN is also concerned that some of the proposals may not be "technology neutral." As one example, the *Further NPRM* suggests that "shared" broadband services, including cable modem and wireless broadband service might, receive special favorable service, at least insofar as "burstable bandwidth" might not be fully assessed for purposes of determining contributions.[13] ADTRAN believes it would be anomalous to consider the maximum speeds available to consumers for only some technologies, and not others, when categorizing capacity for contribution purposes.

In a related vein, the *Further NPRM* asks whether speed tiers for universal service contribution purposes should be based on actual speeds versus advertised speeds.[14] The Commission elsewhere is addressing speed measurements for purposes of determining whether a service provider demonstrates compliance with the minimum speeds for purposes of eligibility for broadband subsidies under the Connect America Fund,[15] as well as measuring speed for

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> The State Members of the Joint Board recommend that both telecommunications services and information services (such as broadband Internet access services) should be assessed and suggest that if most of the revenues currently reported on FCC Form 499 Line 418 were assessed, that would reduce the contribution factor to approximately two percent.

[13] *Further NPRM* at ¶ 262.

[14] *Further NPRM* at ¶ 259.

[15] *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 76 *Federal Register* 78384 (December 16, 2011) at ¶ 1014.

purposes of consumer disclosure.[16] ADTRAN had urged the Commission to be consistent in measuring speeds for both of those purposes.[17] ADTRAN believes that for purposes of equity and simplicity, the best course would be also to use the same standards for speed measurements for purposes of payment of contributions. It would be anomalous to allow a service provider to claim it is meeting minimum speed requirements by using an "up to" type of measure, but then base its contribution on a lower "actual, reliable" speed measure. Such disparate measures of speed could artificially advantage particular "shared" broadband technologies.

Another proposal in the *Further NPRM* that could violate the "technology neutral" precept is the notion of utilizing "per connection" charges, but assessing multiple "per connection" charges when the same facility is used to provide multiple services. Such a scheme could be interpreted to apply a double charge for DSL services.[18] Under such a scenario, a customer subscribing to DSL and voice service over the same copper loop would be assessed two connection charges, while a customer that subscribed to a cable modem service that then used an "over the top" voice application would presumably be assessed a single connection

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[16] Since late 2009, the Commission has been working with industry, academia and other groups on a project to measure broadband performance in a consistent and meaningful manner. *Consumer Information and Disclosure; Truth-in-Billing and Billing Format; IP-Enabled Services*, Notice of Inquiry, 24 FCC Rcd 11380 (2009).

[17] *See* Comments of ADTRAN in WC Docket 10-90, filed January 18, 2012, at pp. 6-11.

[18] *Further NPRM* at ¶ 236:

> Under a service-based definition, the definition of the connection "unit" would focus on the service or services that are delivered over the facility. Under such a definition, each interstate telecommunications service using the connection would be assessed as one "unit," as could any service that had an interstate telecommunications component. For example, in contrast to the facilities-based definition, if a customer purchases two services that we have determined are assessable and that are delivered over the same facility, the provider would be assessed for two connections

charge. The Commission should avoid a contribution mechanism that discriminates against DSL in such a manner.

Finally, ADTRAN is concerned that the *Further NPRM* includes some proposals that would incorporate and possibly expand some of the more convoluted aspects of the current system, thus conflicting with the principle of simplicity. For example, several of the proposals would extend or expand the contributions to be made by bundled services where only some of the service revenues would be subject to the "tax."[19] Such a scheme necessitates that the Commission and/or the service provider allocate revenues amongst the different services, but many such allocations would necessarily be arbitrary. For example, where services are sold as a bundle, allocating the revenues could reasonably be done on the basis of relative stand-alone prices (assuming that each of the services is sold on a stand alone basis), although there are other equally reasonable means of allocating the revenues. Given the arbitrary nature of the various revenue allocations, the Commission's characterization of such allocation efforts as "gaming" may be too pejorative.[20] One way in which the Commission previously simplified the revenue allocations in cases where revenues were to be allocated on the basis of relative use was to allow

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[19] *E.g., Further NPRM* at ¶ 10:

> Revenues from interstate telecommunications to which the Commission has extended its permissive authority are also included in the contribution base. In contrast, revenues from information services (including retail broadband Internet access services) have never been included in the contribution base. A contributor that provides a mix of these different types of services must therefore apportion its revenues between telecommunications and non-telecommunications sources for purposes of contribution assessment.

[20] *Further NPRM* at fn. 74:

> When a contributor bundles assessable and non-assessable services in a single offering, the contributor must determine how much of the revenue from the offering should be allocated to the assessable service. This can incentivize the contributor to game the system by allocating the revenue in a manner that reduces contributions burdens.

the use of "safe harbors" in lieu of requiring traffic studies. However, presumably such "safe harbors" need to be adjusted from time-to-time, necessitating traffic studies, which in turn complicates the allocation and reporting procedures.[21] The Commission should strive to adopt a contribution methodology that minimizes the need for traffic studies or other similar burdensome complications.

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ADTRAN urges the Commission to adopt a rational, fair, technology-neutral and uncomplicated contribution methodology. The Further NPRM offered a wide range of proposals, and as noted above, not all of them will advance the public interest. Indeed, choosing the wrong contribution methodologies will undermine the Commission's overarching goal of making broadband service universal.

Respectfully submitted,

ADTRAN, Inc.

By: ____/s/_____
Stephen L. Goodman
Butzel Long Tighe Patton, PLLC
1747 Pennsylvania Ave, NW, Suite 300
Washington, DC 20006
(202) 454-2851
SGoodman@bltplaw.com

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[21] In the *Further NPRM*, the Commission discusses the various traffic studies filed in lieu of using the safe harbors as a basis for retaining the safe harbors, but apparently failed to account for the fact that such studies are only submitted when the result of the study is lower than the safe harbor. If a service provider conducts a traffic study and learns that its "taxable" percentage is higher than the safe harbor, then the provider presumably uses the safe harbor. Thus, there is a bias in the submitted studies that the *Further NPRM* seemingly ignored. *Further NPRM* at ¶ 135.